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James Eldon

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EXAMINER

RAINEY, ROBERT R

ART UNIT

PAPER NUMBER

2629

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Advisory Action***

***Response to Arguments***

1. Applicant's arguments filed 4/27/2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the replacement of the display of Yamazaki with the display of Lueders would require the removal of the buttons, housing, electrical wiring etc, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that Lueders teaches away from having a fixed arrangement of keys and that it is therefore incompatible with the fixed key arrangement of Yamazaki. Even if Lueders did teach away from a fixed key arrangement, it would not detract from what is taught by Lueders, nor prevent its combination with Yamazaki as presented. In any case, Lueders explicitly teaches having a fixed arrangement of keys. Fig. 3 and 6-10 most clearly illustrate an array of snap-dome switches underneath a flexible display

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element. The key locations are clearly fixed. Both Yamazaki and Lueders teach fixed keys with a flexibility in the way the keys are labeled.

Applicant uses the arguments discussed above as the basis for an argument that there is no teaching, suggestion, or motivation to combine Yamazaki and Lueders other than hindsight based on applicant's disclosure. Examiner has pointed out the flaws in the arguments upon which the conclusion of impermissible hindsight was based. This is not a combination in which art from very different areas was combined to piece together applicant's claimed invention as was cautioned against by *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988.). In *Ex parte* DESIREE D. G. GOSBY and KEITH I. ITO under the heading of "Obviousness" the following seems applicable: The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See *In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Since examiner, in the rejections disputed, did articulate reasoning with some rational underpinning to support the legal conclusion of obviousness, the finding of obviousness is not base purely on hindsight from isolated disclosures; therefore, this argument is not found to be persuasive.

### ***Note***

In an attempt to promote expeditious prosecution, examiner notes that the cancellation of claim 8 as proposed in order to overcome an indefiniteness issue seems to introduce more problems than it fixes. For example, several claims would depend from a non-existent claim and would include elements for which claim 8 previously provided antecedent basis.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT R. RAINEY whose telephone number is (571)270-3313. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571) 272-7674. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/RR/